



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Richard Jay
Serial No. : 10/043,844
Filed : January 14, 2002
For : DEPTH-EXTENDABLE DISPLAY TRACK UNIT
Examiner : Koah H. Tran
Group Art Unit : 3634

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Name: NEAL K. ROSENBERG
Signature: Neal K. Rosenberg
Date: 8-8-03

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AMENDMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

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This is in response to the Office Action dated June 19, 2003.

The Examiner objects to the drawings under 37 C.F.R. 1.83(a) for an alleged failure to show the "stop means for limiting forward movement of articles on said standard depth display track," as called for in Claim 3. Applicant respectfully refers the Examiner to the showing of lip 21 in FIGS. 1-6, the lip being described at p. 6, lines 17-20.

The claims are rejected under Section 112, second paragraph, as indefinite because it is unclear "what 'essentially identical' define and comparing with respect to what structures since both tracks are set forth to be essentially identical." The use of the term "essentially" is accepted by both the Patent Office and the courts to indicate that two otherwise identical articles may differ in non-essential respects, that is, respects

which do not interfere with the basic functioning of the articles as claimed. In the context of the present invention, for example, one display track may have a front section defining a front stop which is three inches in height, and the other track may define a front section having a front stop which is five inches in height. As only one of the front stops will be used in the composite formed from the two tracks, clearly the difference in height of the front stops is non-essential. However, even if the difference were something which manifested itself in the composite track--for example, the lengths of intermediate sections differing between the two tracks--this again would not interfere with the basic functioning of the invention, as presumably intermediate sections of appropriate length would be used by the person forming the composite unit.

Applicant does not understand precisely what is the Examiner's objection to line 7 of Claims 1 and 7 ("the claims underline a function without reciting of acts for performing that function"). Presumably the Examiner is referring to the "rear engagement means," but the claims specify the function of the rear engagement means by stating that the intermediate and back sections define at the front of each such section "forward engagement means for engagement with said rear engagement means at the rear of said back section." As the two tracks are "essentially identical," the rear engagement means at the rear of the back section of one track may be used to engage the intermediate and back sections of the other track to form "a single depth-extended display track from one of the standard depth display tracks and at least one section of another of said standard depth display tracks," as set forth at the beginning of the claims.

With respect to Claim 2, line 3, Applicant respectfully submits that the terminology “configured and dimensioned” is well recognized by both the Patent Office and the courts as defining shape and size. With respect to Claim 2, the term is simply used to indicate that the forward engagement means (defined as female in Claim 5) is configured and dimensioned to receive therein the rear engagement means (defined as male in Claim 5) projecting rearwardly from the back section (thereby, as stated in Claim 5, to “cooperatively form a male/female engagement”).

Claims 1-8 are rejected as anticipated by Primiano et al. U.S. 6,523,702; Claims 1-2 and 5-6 are rejected as anticipated by Gutsell U.S. 5,182,996; and Claims 1-2 and 5-7 are rejected as anticipated by Slaiken U.S. 5,183,163.

The present application was filed on January 14, 2002, well before the February 25, 2003 issue date of Primiano et al. Accordingly, Applicant respectfully submits that there is no basis for a rejection of the claims of the present application under Section 102(b) as anticipated by Primiano.

In the event that the Examiner should issue a new rejection based on Primiano under Section 102(e), Applicant reserves the right to file a Declaration under Rule 131, showing conception of the present invention prior to the November 29, 2001 filing date of Primiano.

In any case, Primiano fails to show “a depth-extendable display track unit consisting of at least two essentially identical standard depth display tracks for forming a single depth extended display track from one of said standard depth display tracks and at least one section of another of said standard depth display tracks,” as required by

Applicant's claims. Primiano discloses only a single display track which may be broken into a front segment, a rear segment, and various breakaway intermediate segments and then recombined in various ways using some or all of the segments, to form a desired track having the same or fewer segments and, correspondingly, the same depth or a lesser depth. The Examiner is respectfully requested to point to any portion of Primiano which suggests that any of the segments of a second display track may be combined with any or all of the segments of a first display track in order to form a modified first display track of greater length than the unmodified first display track.

Applicant also notes that Primiano in fact discloses a section 12 (not 22) that has a stop means 34 (not 30), a plurality of series breakaway intermediate sections 14, 16, 18, 20 and a breakaway back section 22 (not 12). In other words, the Examiner's analysis of the Primiano structure is reversed from that taught by Primiano. This requires that the Examiner consider the "rear panel 30 . . . to strengthen the structure" (col. 4, lines 2-5) as being a stop means and ignore Primiano's identification of "a front piece 34 that acts as a front stop for articles on the track" (col. 4, lines 26-27).

Perhaps more significantly in terms of function, the Examiner's somewhat strained interpretation requires that the alleged "breakaway back section 12" does not have a "rear engagement means at the rear thereof" (as required by Claim 1) or a "rear engagement means [projecting] rearwardly from said back section" (as required by Claim 2) or a "rear engagement means [which] is male in nature" (as required by Claim 5). Under the Examiner's interpretation breakaway back section 12 has no rear engagement means at the rear thereof, no rear engagement means projecting rearwardly

from the back section, and no rear engagement means which is male in nature.

Breakaway section 12 has rather two female recesses at the front thereof which receive two male projections from an intermediate section 14.

Finally, in Primiano the forward and rear engagement means are part of the display track floor (that is, the article-supporting surface of the track) and are not “disposed below the level of an article-supporting surface at said intermediate and back sections,” as required by Claim 6.

It will be appreciated that the comments above with regard to Primiano are not being made in response to any rejection based on Primiano since, Applicant respectfully maintains, based on dates alone there is no basis for a Section 102(b) rejection.

Turning now to the rejections based on Gutsell and Slaiken, it will be appreciated that neither reference deals with a display track, as called for by Applicant’s claims, nor with “breakaway” back and intermediate sections as called for by Applicant’s claims. “Breakaway” is discussed in Applicant’s specification at page 6, line 20 - page 7, line 11, and is not met by any pair of articles which merely interlock and may be separated without “breaking.” Indeed, Applicant’s claims specifically require “said forward engagement means being disposed for engagement by breaking away of the immediately forward section” (emphasis added).

Interestingly, Slaiken does not suggest use of two interlocking-continuous spaced bookends, but only a female end unit 1, a male end unit 2, and one or more optional base extenders 3 (col. 3, lines 42-47). It will also be appreciated that in Slaiken the only engagement means 8 of what the Examiner refers to as the “back section 2” is not “at the

rear thereof,” as called for by Applicant’s claims, but rather at the front thereof, pointing towards what the Examiner refers to as the “front section 1.” Whereas Applicant teaches the addition of segments to the rear of the rear section (using “said rear engagement means at the rear of said back section”), Slaiken instead teaches only increasing the number of segments between the front and back sections.

If the end unit 2 and intermediate extender 3 of Slaiken meet the requirements of Applicant’s claims that “said intermediate and back sections [define] at the front of each such section forward engagement means for engagement with said rear engagement means at the rear of said back section,” as presumably alleged by the Examiner, what constitutes the “rear engagement means at the rear of said back section”?

Finally, it appears that in Slaiken the upper surfaces of the intermediate segments 3, the male base 8 and the tongue 6 all constitute the “article-supporting surface of said intermediate and back sections” and that therefore the forward and rear engagement means postulated by the Examiner are not “disposed below the level of an article-supporting surface of said intermediate and back sections,” as called for by Claim 6.

With regard to Gutszell specifically, Applicant respectfully notes that the forward engagement means 90 is not “exposed for engagement by breaking away of the immediately forward section,” as called for by Applicant’s claims, or even by disengagement of the immediately forward section. Rather, the forward engagement means 90 (whether they be the pivoting bracket assemblies 15 of FIGS. 1-4, the flat bracket 41 of FIG. 4, the bracket 61 of FIG. 5, the bracket 91 of FIG. 7, or the brackets 86, 90 of FIG. 6) require careful manual positioning according to their respective natures

in order to have them appropriately positioned for engagement with another table top. Clearly they are not "exposed for engagement by breaking away of the immediately forward section," as called for in Applicant's claims.

To summarize, Applicant respectfully submits that the rejection based on Primiano under Section 102(b) is improper, and that the Slaiken and Gutsell references do not teach display tracks at all, let alone depth-extendable display tracks.

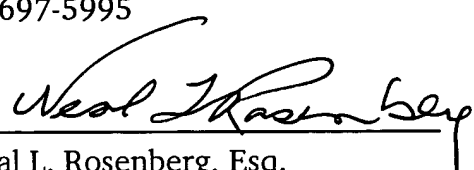
In view of the above remarks, reconsideration of the rejection and allowance of all claims is respectfully requested.

If an extension of time is required to enable this document to be timely filed and there is no separate Request for Extension of Time, this document is to be construed as also constituting a Request for Extension of Time Under 37 C.F.R. § 1.136(a) for a period of time sufficient to enable this document to be timely filed. Any fee required for such a Request for Extension of Time and any other fee required by this document pursuant to 37 C.F.R. §§ 1.16 and 1.17 and not submitted herewith should be charged to the Deposit Account of the undersigned attorneys, Account No. 01-1785; any refund should be credited to the same account. One copy of this document is enclosed.

Respectfully submitted,

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August 8, 2003

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